

## § 1150.132

Mississippi, North Carolina, Commonwealth of Puerto Rico, South Carolina, Tennessee, and Virginia.

(11) Two members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Three members from region number twelve comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

(c) Two members of the Board shall be importers who are subject to assessments under § 1150.152(b).

(d) The Board shall be composed of milk producers and importers appointed by the Secretary either from nominations submitted pursuant to § 1150.133 or in accordance with § 1150.136. A milk producer may be nominated only to represent the region in which such producer's milk is produced.

(e) At least every five years, and not more than every three years, the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the number of producer members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

(f) At least once every three years, after the initial appointment of importer representatives on the Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion the importer representation on the Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. The basis for comparison of domestic production of dairy products to imported products shall be estimated total milk solids. The calculation of total milk solids of imported dairy products for reapportionment purposes shall be the same as the calculation of total milk solids of im-

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ported dairy products for assessment purposes.

(g) In determining the volume of milk produced and total milk solids of dairy products produced in the United States, the Board and Secretary shall utilize the information received by the Board pursuant to § 1150.171(a) and data published by the Department.

[76 FR 14788, Mar. 18, 2011, as amended at 76 FR 80216, Dec. 23, 2011]

### § 1150.132 Term of office.

(a) The members of the Board shall serve for terms of three years, except that:

(1) The members appointed to the initial Board shall serve proportionately, for terms of one, two and three years.

(2) The 2 importer members initially appointed to the Board shall serve until October 31, 2013, and October 31, 2014.

(b) Each member of the Board shall serve until October 31 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

(c) No member shall serve more than two consecutive terms.

[49 FR 11816, Mar. 28, 1984, as amended at 60 FR 53253, Oct. 13, 1995; 76 FR 14788, Mar. 18, 2011]

### § 1150.133 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) The Secretary shall solicit nominations for producer representation on the Board from all eligible organizations. For nominations of producers, if the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.

(b) After the appointment of the initial Board, the Secretary shall announce at least 120 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described

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in paragraph (a) of this section. Nominations for such position should be submitted to the Secretary not less than 60 days prior to the expiration of such term.

(c) An eligible producer organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.

(d) Where there is more than one eligible organization representing producers in a specific geographic region, the organizations may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

(e) Nominations for representation of importers may be submitted by:

(1) Organizations that represent importers of dairy products, as approved by the Secretary. The primary considerations in determining if organizations adequately represent importers of dairy products shall be whether its membership consists primarily of importers of dairy products and whether a substantial interest of the organization is in the importation of dairy products and the promotion of the nutritional attributes of dairy products; and

(2) Individual importers of dairy products. Individual importers submitting nominations to represent importers on the Board must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of dairy products.

[49 FR 11816, Mar. 28, 1984, as amended at 76 FR 14788, Mar. 18, 2011]

### § 1150.134 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters where paragraph (b) applies.

[49 FR 11816, Mar. 28, 1984, as amended at 76 FR 14789, Mar. 18, 2011]

### § 1150.135 Appointments.

From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the bases of representation provided for in §§ 1150.131(b) and 1150.131(c).

[76 FR 14789, Mar. 18, 2011]

### § 1150.136 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board.

### § 1150.137 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph when in the opinion of the chairman of the Board such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

[49 FR 11816, Mar. 28, 1984, as amended at 50 FR 9984, Mar. 13, 1985]